IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 345 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

BANSILAL SHANKERLAL

Appearance:

1. Criminal Appeal No. 345 of 1986

MR KC SHAH APP for Appellant

MR MAGANBHAI BAROT, Sr. Advocate with
MR MJ BUDDHBHATTI for Respondent-Accused

MR KJ SHETHNA for Complainant

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 08/04/2004

C.A.V. JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

This appeal is directed against the judgment and order dated 30.1.1986 of the learned Additional Sessions Judge, Ahmedabad at Narol in Sessions Case No.120 of 1985 acquitting the respondent-accused of the offence punishable under Section 302 IPC.

2. The accused was charged with the offence of committing murder of Savjibhai Nanjibhai Thakkar at Dholka at 5-30 PM on 30.8.1985. The prosecution case, as per the complaint lodged by Amrutlal Savjibhai, son of the deceased at 8-30 PM on the same evening, was that at 5-30 that evening, the deceased had gone to the wada near the house of the complainant for giving grass to their buffalo when there was altercation between the accused and the deceased, and the accused got excited and picked up a PAVDA (an agricultural equipment like a shovel with a 60 degree angle between the iron pan and the wooden handle) lying in the wada and gave the first blow on the forehead of the deceased and when the deceased was falling down on the ground, the accused gave the second blow on the back of the head of the deceased. When the complainant and the other family members heard the commotion they came out of the house and they saw the accused giving two blows to the deceased with the pavda. On seeing the complainant and others, the accused ran away. The deceased and two other persons tried to chase the accused but as the deceased had become unconscious and was lying in the wada, the complainant and others returned to the spot and took the deceased inside the house. The complainant tried to get a Doctor to their residence to give treatment to the deceased but as it was Rakshabandhan day (Raakhi day) and evening, the complainant could not find any private doctor and, therefore, rushed the deceased to the Municipal hospital. A complaint was lodged by the son of the deceased at 8-30 PM. Since the doctor at the Municipal hospital advised that the deceased was required to be shifted to Ahmedabad, the complainant and his elder son were taking the deceased to Ahmedabad when the deceased succumbed to the injuries on the way. Hence, the complaint was lodged against the accused for committing the offence punishable under Section 302 IPC by converting the offence from Sections 324, 323 and 506(2) IPC. A copy of the FIR was sent to the learned JMFC, Dholka on 30th August, 1985 itself. The accused was arrested on 31.8.1985 at about 10-30 AM. The accused was chargesheeted on 30.9.1985 and the case was committed to the Court of Sessions. The accused pleaded not guilty to the charge.

3. The prosecution led the following evidence:-

EYE WITNESSES:

PW 2 Complainant-Amrutlal Savjibhai Thakkar Exh.17- son of the deceased.

PW 3 Amarsing Mavsing Exh.18 - tenant of agricultural land of complainant's family

PW 5 Pankaj Amrutbhai Thakkar Exh.21 - grandson of the deceased and younger son of the complainant.

MEDICAL EVIDENCE:

PW 4 Dr CV Barad Exh.19 who conducted the post-mortem on the body of the deceased on 31.8.1985 between 9-00 and 10-00 AM.

PANCH WITNESS:

PW 1 Narsinhbhai Haribhai Patel Exh. 12, who proved the panchnama of the scene of offence Exh.8.

PW 7 Manubhai N Joshi Exh.23 (Page 113) Circle Inspector, who had prepared the map of the scene of offence Exh.24.

POLICE WITNESSES:

PW 6 Yashwant Narsinh Exh.22 (Page 109) Police Head Constable at Dholka Police Station who had taken down the FIR.

PW 8 Jamsing P Waghela Exh.25 (Page 117) PSI, Dholka Police Station, who was the Investigating Officer.

In his statement under Section 313 Cr PC the accused stated that he was implicated in the offence because the complainant had a dispute with Babubhai whose house the accused used to visit.

4. After considering the oral and documentary evidence on record, the learned Additional Sessions Judge held that although there were no contradictions or material omissions in the evidence of complainant PW 2 Amrutlal (son of the deceased), PW 3 Amarsinh (tenant of the family of the complainant and the deceased) and PW 4 Pankaj (grandson of the deceased and son of the

complainant) and, therefore, their evidence was trustworthy, the learned trial Judge acquitted the accused by giving him the benefit of doubt on the following grounds:-

(i) Presence of PW 3 Amarsinh at the scene of offence was doubtful;

(ii) There was delay in lodging the FIR.

(iii) There was discrepancy between the oral evidence given by the witnesses about the manner in which the weapon in question was used and the medical evidence;

(iv) There was possibility of absence of the buffalo at the scene of the offence and, therefore, there was doubt about the incident having been taken place.

(v) Jayantilal in whose wada the buffalo was kept as per the prosecution case was not examined.

Accordingly, the learned Additional Sessions Judge acquitted the accused of the offence punishable under Section 302 IPC. It is against the aforesaid judgment and order that the State has come in appeal to this Court.

5. At the hearing of the appeal, Mr KC Shah, learned Additional Public Prosecutor submitted that the learned Additional Sessions Judge had rightly held that the evidence of the complainant PW 2 Amrutlal Thakkar (son of the deceased), PW 3 Amarsinh (tenant of the family of the complainant and deceased) and PW 4 Pankaj (son of the complainant and grandson of the deceased) was trustworthy as there were no serious contradictions or omissions in their evidence. Even then the learned Sessions Judge has erred in entertaining trivial fanciful doubts. There was no reason whatsoever for three eye-witnesses including the son of the deceased and the grandson of the deceased to falsely implicate the accused.

Strong reliance has been placed on the decision of the Apex Court in State of Punjab vs. Karnail Singh, 2003 (7) JT 543 = 2003 (11) SCC 271 laying down the principles which the Court should bear in mind while deciding a criminal case.

It is further submitted that the judgment of the trial court is palpably wrong, manifestly erroneous and

wholly untenable and, therefore, this Court is required to set aside the order of acquittal. The grounds which appealed to the trial Court are dealt with as under:-

5.1 PW 3 Amarsinh's presence at the site was quite natural as he had gone to the house of the complainant and the deceased to seek guidance regarding the irrigation arrangements to be made in the agricultural field of the deceased and the complainant. There was no reason why Amarsinh should give any evidence against the accused and nothing was suggested in the cross examination of the witness to shake his credibility.

5.2 In the facts and circumstances of the case, there was no delay in lodging the FIR. The incident in question had taken place at about 5-30 PM. The accused had given two blows to the deceased who was still alive and, therefore, the first priority of the eye-witnesses, who were the family members and tenant of the deceased, was to give medical treatment to the deceased. Being an evening of Rakshabandhan day, the doctors were not easily available and, therefore, when the FIR was lodged at about 8-30 PM (i.e. within three hours of the incident), there was no delay, much less any unreasonable delay.

5.3 The oral evidence of the eye-witnesses was read by the trial Court in a perverse manner. There is no inconsistency between their evidence and the medical evidence. Even if there was any inconsistency, the direct evidence of eye-witnesses has to be preferred.

5.4 The incident had taken place in presence of as many as three eye-witnesses and, therefore, merely because the presence of the buffalo is not noted in the panchnama, which was prepared on the next day, it cannot be said that there was no buffalo at the place in question.

5.5 The trial was for the offence committed of inflicting blows by the accused on the deceased and not regarding any ownership dispute over the land in question and, therefore, it was not necessary to examine Jayantibhai who was owner of the wada in question where the buffalo of the deceased and the complainant was kept.

6. On the other hand, Mr Maganbhai Barot, learned Sr. Advocate instructed by Mr MJ Buddhbhatti have vehemently opposed the appeal and have submitted that no interference is called for merely because another view on the same evidence may be possible. It is submitted that the evidence of the so-called eye-witnesses does not

inspire confidence as their conduct is not natural. According to prosecution case, there were as many as three males and one female when the accused is alleged to have inflicted blows on the deceased and natural conduct of the witnesses would have been to intervene and save the deceased rather than allow the accused to inflict such blows on the deceased. Being three persons, the male witnesses could have also caught hold of the assailant.

No conviction can be made in absence of any legal reliable and unimpeachable evidence which was required to connect the accused to the crime.

Strong reliance is placed on the following decisions:-

AIR 1957 SC 637 Sarwan Singh vs. State of Punjab

AIR 1995 SC 2128 A. Jayaram vs. State of A.P. (2138)

AIR 1979 SC 135 Ganesh Bhavan Patel vs. State of Maharashtra

1997 (1) GLR 307 Ramesh B. Doshi vs. State of Gujarat

1974 (3) SCC 639 Thakarde Lalaji Gamaji vs. State of Gujarat

JT 2002 (10) SC 530 Jasbir and Ors. vs. State of Haryana

JT 2003 (1) SC 10 Baldev Singh & Anr. vs. State of M.P.

2003 (1) SUPREME (CR.) 118 Shailendra Pratap vs. State of Uttar Pradesh

7. Before dealing with the rival submissions of the learned counsel for the parties, we may refer to the principles recently laid down by the Hon'ble Supreme Court for deciding acquittal appeals as enunciated in State of Punjab vs. Karnail Singh, 2003 (7) JT 543 = 2003 (11) SCC 271 (para 6):

"6. There is no embargo on the Appellate

> Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is not less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the Appellate Court to re-appreciate the evidence even where the accused has been acquitted, for this purpose of ascertaining as to whether any of the accused committed any offence or not - Bhagwan Singh vs. State of Madhya Pradesh, JT 2002 (3) SC 387. The principle to be followed by Appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade vs. State of Maharashtra (1973) 2 SCC 793, Ramesh Babulal Doshi vs. State of Gujarat (1996) 9 SCC 225 and Jaswant Singh vs. State of Harayana, JT 2000 (4) SC 114.

8. Before proceeding further we may also note the finding given by the learned Additional Sessions Judge that there are no contradictions or omissions in the oral evidence of the PW 2 complainant (son of the deceased), PW 3 Amarsinh (tenant of the complainant and the deceased) and PW 4 Pankaj (son of the complainant and grandson of the deceased) and that their evidence is trustworthy. Surprisingly, even after giving this clear-cut finding, the learned trial Judge allowed himself to be swayed by certain so-called doubts to which we will refer hereinafter. As to how doubts about guilt of the accused are to be dealt with, the Apex Court has laid down the following principles in State of Punjab vs. Karnail Singh (supra):-

"12. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law Gurbachan Singh vs. Satpal Singh, AIR 1990 SC 209. Prosecution is not required to meet any and every hypothesis put forward by the accused State of UP vs. Ashok Kumar Srivastava, AIR 1992 SC 840. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial' if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not fetish Inder Singh vs. State (Delhi Admn.) AIR 1978 SC 1091. Vague hunches cannot take place of judicial evaluation. "A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties ". (Per Viscount Simon in Stirland vs. Director of Public Prosecution 1944 AC (PC) 315 quoted in State of UP vs. Anil Singh, AIR 1988 SC 1997. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth - Shivaji Sahebrao Bobadev vs. State of Maharashtra 1974 (1) SCR 489, State of UP vs. Krishna Gopal and Anr. , JT 1988 (3) SC 141 = AIR 1988 SC 2154 and Gangadhar Behera and Ors. vs. State of Orissa, JT 2002 (8) SC 135."

9. As already indicated above, the learned trial Judge has given five grounds to give benefit of doubt to the accused. The first ground is raising doubt about the presence of PW 3 Amarsinh. As per the evidence led on behalf of the prosecution, Amarsinh is the tenant for cultivating the agricultural lands of the deceased and the complainant. He deposed that he had gone to the house of the complainant as instructions were to be taken regarding irrigation to be provided to the paddy crop

sown in the field of the complainant at Dholka. There is no reason to doubt the presence of this witness at the house of the complainant and the deceased who was the father of the complainant. We have gone through the evidence of Amarsinh and we find that his evidence has not at all been shaken.

9.1 We may, at this stage, refer to the decision of the Apex Court in Rana Pratap vs. State of Haryana, 1983 (3) SCC 327, wherein the Hon'ble Supreme Court made the following pertinent observations:-

> "3. There were three eye-witnesses. One was the brother of the deceased and the other two were a milk vendor of a neighbouring village, who was carrying milk to the dairy and a vegetable and fruit hawker, who was pushing his laden cart along the road. The learned Sessions Judge and the learned counsel described both the independent witnesses as 'chance witnesses' implying thereby that their evidence was suspicious and their presence at the scene doubtful. We do not understand the expression 'chance witnesses'. Murders are not committed with previous notice to witnesses, soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere 'chance witnesses'. The expression 'chance witnesses' is borrowed from countries where every man's home is considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is a most unsuitable expression in a country whose people are less formal and more casual. To discard the evidence of street hawkers and street vendors on the ground that they are 'chance witnesses' even where murder is committed in a street, is to abandon good sense and take too shallow a view of the evidence."
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> (emphasis supplied)

9.2 Mr Barot for the accused submitted that if Amarsinh alongwith complainant Amrutbhai and son Pankaj all three of them were there near the wada, the accused would not have dared to inflict two blows of the pavda on

the deceased. They could have easily caught hold of the accused and prevented him from inflicting any such blows on the deceased, who was aged 70 year old at that time. At least they would have shouted and the neighbours would have gathered there.

Mr KC Shah, learned Additional Public Prosecutor has, however, rightly submitted that different people react to the same situation in a different manner as discussed in the same case of Rana Pratap (supra). The following pithy observations of the Hon'ble Supreme Court speaking through Hon'ble Mr Justice DA Desai need to be quoted :

"6. Yet another reason given by the learned Sessions Judge to doubt the presence of the witnesses was that their conduct in not going to the rescue of the deceased when he was in the clutches of the assailants was unnatural. We must say that the comment most unreal. Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."

The above decision has been followed in several decisions, to cite a few: 1972 SCC (Cri) 237 (para 23), 1999 (8) SCC 649 (paras 6 to 8), 1999 (9) SCC 525 (paras 9 to 15) and 2001 (10) SCC 45 (paras 12 to 14).

9.3 Moreover, it is clear from the evidence that the deceased had gone to the wada in order to feed the buffalo with some grass when the three male eye-witnesses, two of whom are family members of the deceased, and the daughter of the complainant were inside the house. As soon as they heard the commotion, they went out of the house. However, the distance between the house and the wada was about 40 feet and, therefore, while they could hear the altercation between the accused and the deceased about a trivial thing like the deceased

blaming the accused for urinating in the wada and the accused blaming the deceased for throwing grass on the ground, nobody could have imagined that such a small issue would excite the accused to such an extent that he would go to the length of inflicting pavda blows on the deceased. It is the case of both the sides that when accused was having altercation with the deceased, the accused did not have any weapon in his hand and the witnesses would naturally take some time to cover the distance between the house and the wada and all of a sudden, the accused picked up the pavda lying in the wada and gave two quick blows on the deceased. Everything happened very quickly and suddenly and in the most unexpected manner. Therefore, the witnesses who were the son and grandson of the deceased and their tenant, could not have anticipated that the accused would give any blows to the deceased. Even for pacifying the accused who might have been in an aggressive mood, the witnesses, who were son, grandson and tenant of the deceased, were required to go physically near the accused and the deceased but before they could do so, the assault was made in the swiftest most unexpected manner and, therefore, the eye-witnesses had no time to intervene. The version of the prosecution witnesses cannot be discarded merely on the ground that the three male eye-witnesses could have prevented the accused from inflicting blows on the deceased.

10. As regards the ground of delay in filing the FIR, again Mr Barot, learned counsel for the defence has contended that the conduct on the part of the eye-witnesses was not natural. When the deceased was assaulted by the accused at 5-30 PM, the eye-witnesses, (two of whom were family members of the deceased) could have and would have easily taken the deceased to the hospital immediately or gone to the police station immediately but neither of this event took place and, therefore, the learned trial Judge has rightly doubted the prosecution case.

We are afraid the defence argument overlooks the fact that on account of two pavda blows the deceased had fallen down and was required to be taken home and looked after. One important thing to be noted is that the deceased was not bleeding from the injuries received by him, one above the right eye and the other on the back of the head. There was only some blood coming from the nose of the deceased as stated by PW 3 Amarsinh. Hence the witnesses after taking the deceased inside the house tried to call some doctor at home. This was quite natural as taking the deceased to the hospital would have

involved calling a vehicle from outside and further exposing the deceased to the risk of a bumpy ride. Even the jeep of the family had not come back as the wife and elder son of the complainant had gone for darshan and they were waiting for the jeep to come back. After the jeep came back, the elder son of the complainant and the complainant left and informed the the police station. It cannot be said that this time lag of three hours was unnatural. Quite sometime was consumed in making attempts to get the doctor to the residence of the complainant. Hence, the so-called doubt about the delay in filing the FIR was thoroughly fanciful and not worthy of being seriously considered.

11. Mr Barot next contended that the complainant in his complaint as well as the witnesses had stated that the accused had given blows to the deceased with the sharp edged weapon but there were no such injuries found on the deceased and, therefore, the prosecution evidence suffers from serious infirmities.

11.1 We may at this stage point out that in his complaint Exh.22, the complainant had stated that the accused had given a direct blow to the deceased. In his evidence, the complainant stated that the accused gave a direct blow above the right eye of the deceased with the front portion of the pavda and thereupon when the deceased was falling down the accused gave the second blow with the rear part of that pavda.

11.2 PW 4 Dr Barad Exh. 19 stated in his evidence that the deceased had suffered from the following injuries:-

EXTERNAL INJURIES:

(i) Contused Lacerated Wound above right eye 1/2" X 1/2" bone deep.

(ii) Swelling behind and above left ear, abrasion on it 1/2" X 1/2".

INTERNAL INJURIES:

(i) Blood clots on left occipital and parietal region and right frontal region.

(ii) Fissured fracture starts from behind left ear

extend in the left parietal bone upto mid-line, second fracture line - descend backwardly in occipital bone, third fracture line travels anteriorly in left parietal bone upto left ear.

(iii) Blood clots in left parietal region and occipital region. They cover area of 3" X 2", red in colour about 200 ml. in quantity.

The cause of death was due to extra dural haemorrhage caused by fractures of skull bone causing injuries to brain.

In his evidence at Exh.19 PW 4 Dr CV Barad who had conducted the post-mortem on the body of the deceased also stated that the blade part of the spade (pavda) was not sharp and it was blunt and it was not so sharp as to cause contused lacerated wound and that with the blade incised wound would be caused. He further stated that external injury No.1 is possible by blunt part of grip of the blade (grip of the blade is circular and its reverse part at the reverse of the spade). It is true that the blade part of the spade is not sharp. The blade part is blunt and is not so sharp as to cause C.L.W. but it would not cause cutting. It is further stated by him and emphasized that C.L.W. is not possible with this blade. With this blade if a wound is caused, it can be incised.

The doctor further stated that external injury No.2 is possible by reverse portion of handle grip of the spade. External injury No.2 corresponded with internal injury No.1 (except blood in frontal region), and internal injury Nos. 2 and 3. External injury No.2 corresponding with internal injury No.1 (except blood clots in right frontal region) and internal injury Nos. 2 and 3 all are sufficient to cause death in the ordinary course of nature. The internal injuries are ante-mortem. The cause of death is due to extra dural haemorrhage caused by fractures of skull bone causing injuries to brain. The post-mortem report was produced at Exh.20.

11.3 In their evidence, all the three eye-witnesses stated that they were inside the house when the deceased went out of the house to feed the buffalo in Jayantibhai's wada near the house. After a few minutes, they heard the commotion and when they went out they heard altercation between the accused and the deceased. By the time they covered the distance between the house and the wada (about 40 to 50 ft.) the accused lifted the pavda lying in the wada and gave two quick blows on the deceased, the first one on the forehead of the deceased

and the second one when the deceased was falling down, on the back of the head of the deceased. All the three eye-witnesses stated (PW 2 and PW 3 were examined before the doctor PW 4 was examined), that the second blow was given by the accused with the back of the pavda. This is quite consistent with the medical evidence also that external injury No.2 was possible by blunt part of the pavda. Even as far as injury No.1 is concerned, the doctor stated that the C.L.W. was not possible with the blade part which was blunt and not so sharp as to cause C.L.W. Mr Barot has, therefore, vehemently urged that when the witnesses stated that the accused had given the first blow by directly hitting the spade on the deceased, there is inconsistency between the medical evidence and the ocular version.

11.4 As already stated in para 9.3 above, the entire incident had taken place in a very short time and the witnesses who had heard the commotion and gone out of the house and heard the altercation between the accused and the deceased, could not have anticipated that the accused would physically assault the deceased. Therefore, the three eye-witnesses who suddenly saw their father/grandfather/landlord being assaulted with the pavda could not be expected to be accurate about the part of the weapon used by the accused. We, therefore, do not think that there was any such serious inconsistency between the medical evidence and the oral evidence of eye-witnesses as to cast any doubt on the presence of the eye-witnesses at the scene of the offence, more particularly when the fatal injury i.e. external injury No.2 is proved by the ocular evidence as well as the medical evidence.

11.5 In Punjab Singh vs. State of Haryana, AIR 1984 SC 1233, Ranmal Samat vs. State of Gujarat, AIR 1993 SC 1676 (para 5), Dharma vs. Nirmal Singh Bittu, AIR 1996 SC 1136 (para 10), and Krishnan vs. State 2003 (6) SCC 151 (paras 18 and 19), the Apex Court has time and again held that the medical evidence cannot override the ocular evidence about the assault by a particular weapon or a particular part of the weapon when oral evidence is satisfactory to explain that the incident was witnessed by the eye-witnesses. In Krishnan (supra) the Apex Court has observed as under:-

> "19. It is trite that where the eye-witnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive.

> Witnesses, as Bentham said, are the eyes and ears of justice. Hence the importance and primacy quality of the trial process. Eye witnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the 'credit' of the witnesses; their performance in the witness-box; their power of observation etc. then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."

When the learned Judge himself has found that the evidence of the three eye-witnesses in this case is trustworthy and does not suffer from any major contradictions or omissions, the principles laid down in the above decision will apply with greater force.

12. The next doubt which was raised on behalf of the accused and which had also appealed to the trial Court was about the absence of reference to the buffalo in the panchnama of the scene of offence. The argument was that since according to the prosecution case the entire incident took place because the deceased had gone out of the house to feed the buffalo and at that time there was altercation between the accused and the deceased and the accused gave the fatal blows, presence of buffalo at the time of drawing the panchnama was sine-qua-non for proving the prosecution case.

We may, however, note the fact that the son and the grandson of deceased i.e. PW 2 and PW 4 respectively have stated in clear terms that the deceased aged 70 years was earlier residing at Village Sakdora but after the death of the mother of the complainant (i.e. the wife of the deceased) about six months prior to the date of the incident, the deceased started staying with the complainant at Dholka about three months prior to the date of the incident. The deceased was having bullock, buffalo and a mare but after shifting to Dholka, the deceased had brought the buffalo and was keeping her in the wada of Jayantibhai Maneklal. The panchnama Exh. 8 clearly shows that there was animal dung and that is quite consistent with the prosecution case. The

panchnama was made at about 7-30 AM on the next day morning i.e. on 31st August and, therefore, it would be quite natural that the buffalo would be taken out for grazing in the morning. As already stated above, when the evidence of three eye-witnesses has been found to be trustworthy, there is no reason to discard the prosecution case only on the ground that there is no reference to buffalo in the panchnama.

13. Coming to the non-examination of Jayantibhai, the prosecution case does not suffer merely because Jayantibhai (owner of the wada where the buffalo was kept) was not examined. Obviously, the dispute here was not about the ownership right in question but whether the accused had inflicted the blows on the deceased. Even otherwise the two revenue entries produced by the accused during his examination under Section 313 Cr PC pertained to two properties other than the wada land where the blows were inflicted by the deceased. When trustworthy evidence of as many as three eye-witnesses is on record and no ground whatsoever is shown as to why the three eye-witnesses would falsely implicate the accused and allow the real assailant (if he was a person other than the accused) to go scot free, the non-examination of Jayantibhai pales into insignificance.

14. We may, of course, note the defence pleaded by the accused in his statement under Section 313 Cr PC that accused was often going to the house of Babubhai Mangaldas and complainant PW 2 Amrutbhai had a quarrel with Babubhai and, therefore, the complainant had lodged the false complaint against the accused for the present offence.

Apart from the fact that in cross-examination of the complainant except putting the above suggestion, no questions were asked to the complainant as to why the complainant would have any dispute with Babubhai, it is not possible to believe that on account of any such alleged dispute between the complainant and Babubhai, the complainant and his son would file a false complaint and falsely rope in the accused for the serious charge of murder of the complainant's father.

15. We are fully satisfied that the reasons given by the trial Court for acquitting the accused are perverse and the approach of the trial Court was absolutely perverse and illegal and the findings given by the trial Court for acquitting the accused are palpably wrong, manifestly erroneous and wholly untenable.

16. The decision in Baldev Singh vs. State of M.P., JT 2003 (1) SC 10 cited by the learned counsel for the accused lays down that where the trial Court is justified in acquitting the accused of the charges as the view taken by it is reasonable one and the order of acquittal cannot be said to be perverse, the High Court should not interfere with such order of acquittal. The order of acquittal is not to be interfered with unless it suffers from the vice of perversity. Since we have already held that the reasons given by the trial Court for acquitting the accused are perverse, the order of acquittal under challenge in this appeal is required to be interfered with.

17. Reference may also be made to the decision in Sarwan vs. State of Punjab, AIR 1957 SC 637 (645) on which great reliance was placed by Mr Barot for the accused. It is true that in criminal trial the accused cannot be convicted on mere suspicion and that it is not sufficient for the Court to hold that the accused may have committed the offence. It is in that context that the Apex Court laid down in the above decision that the distance between 'may' and 'must' would have to be covered by legal, reliable and unimpeachable evidence. In the facts of the present case, we have found that the evidence of the three eye-witnesses is legal, reliable and unimpeachable and is sufficient to prove beyond reasonable doubt that the accused (respondent herein) had inflicted the blows on the deceased. Since the recent decisions in the case of Krishnan vs. State, JT 2003 (6) SC 151 and State of Punjab vs. Karnail Singh, JT 2003 (7) SC 543 have clearly stated and explained the principles required to be applied by the Court for appreciating evidence in a criminal case, we do not think it necessary to deal with the other decisions cited by the learned counsel for the accused which were on the facts of those particular cases and in any case the said decisions do not detract from the principles laid down in the decisions which are referred to in this judgment.

18. After coming to the conclusion that the order of acquittal passed by the trial Court is required to be reversed, the next question would be about the offence committed by the accused. Since the accused had given two blows with the pavda and the second one was on the back of the head of the deceased which was sufficient in the ordinary course of nature to cause death of the deceased as corroborated by the medical evidence, the offence would fall under the main part of Section 300 IPC. As far as applicability of any of the exceptions to Section 300 is concerned, we do not find that any case is

made out for applying any of the exceptions. The rebuke given by the deceased to the accused for urinating in the wada can hardly be said to be grave provocation so as to justify any physical assault on the deceased, much less inflicting blows with an equipment like pavda. Hence, we are of the view that the prosecution has proved beyond reasonable doubt that the accused had committed the offence punishable under Section 302 IPC.

19. Before concluding, it is necessary to refer to the fact that 18 years have passed after the accused was acquitted by the Sessions Court and almost 19 years have elapsed after the date of the incident (30th August, 1985). In State of Madhya Pradesh vs. Ghanshyam Singh, 2003 (8) SCC 13, also it was urged that the occurrence took place in the year 1981 and the accused having been convicted for the offence punishable under Section 304 Part I and having been awarded the sentence for the same, after two decades it would be unreasonable and inequitable to enhance the sentence and to send the accused back to custody, particularly when the fine amount was deposited. The Apex Court by its judgment dated 9.11.2003 negatived the above plea of lapse of two decades for the reasons given in the judgment. This Court would rely upon the same reasons for not hesitating in allowing this appeal against acquittal and in passing the order of conviction against the respondent-accused.

O R D E R

20. In view of the above discussion, we allow the appeal and set aside the judgment and order dated 30th January, 1986 of the learned Additional Sessions Judge A'bad (Rural) in Sessions Case No.120 of 1985. We convict the respondent-accused of the offence punishable under Section 302 IPC.

21. On the question of sentence, since life imprisonment is the minimum sentence for the offence punishable under Section 302 IPC, we do not think it necessary to hear the respondent-accused on the question of sentence.

We accordingly sentence the respondent-accused to life imprisonment.

(D.K. TRIVEDI, J.)

(M.S. SHAH, J.)

Mr Buddhbhatti, learned advocate appearing on

behalf of the respondent-accused, at this juncture, requested us to grant time to the respondent-accused to surrender to the custody, as according to him the respondent-accused after he was acquitted by the learned trial Judge was released from custody and during the pendency of the appeal, he was released on bail as per the order passed by the High Court and accordingly he prayed that eight weeks time be granted to surrender to the custody.

Heard Mr KC Shah, learned APP on the request made by Mr Buddhbhatti.

Considering the request of Mr Buddhbhatti and the fact that this Court has allowed the acquittal appeal filed by the State and convicted the accused for the offence punishable under Section 302 of the IPC, we are of the view that the request of Mr Buddhbhatti deserves to be granted. Accordingly, time to surrender to serve out the sentence is granted for eight weeks from today.

(D.K.TRIVEDI,J.)

(M.S. SHAH, J.)
zgs/-